IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 23602 of 2003

Between:

Indireddy Siva Reddy, s/o Indireddy Subhareddy,
Ex-President, TNTUC., Cuddapah

..... PETITIONER

AND

1 Government of Andhra Pradesh, Revenue Department, rep by its Principal Secretary to Governemnt, A.P. Secretariat, Hyderabad
2 The Commissioner of Prohibition and Excise, A.P. Hyderabad
3 The Superintendent of Prohibition and Excise, Cuddapah district
4 The Joint Collector, Cuddapah District
5 M/s. Madhu Bar & Restaurant, Kotireddy Circle, Cuddapah

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 1 to 4 in granting license No. 18/2002 in favour of the 5th respondent is illegal, arbitrary and against the rule 29 of the APIL and FL rule 1970.

Counsel for the Petitioner: MR.T.PRADYUMNA KUMAR REDDY

Counsel for the Respondents 1 to 4 : GP for Prohibition & Excise

Counsel for the Respondent no.5: Mr. P.Kamalakar

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 23602 of 2003

O R D E R :

Heard Sri T.Pradyumna Kumar Reddy, learned counsel appearing for the petitioner and the learned Government Pleader for Prohibition & Excise appearing on behalf of the respondents 1 to 4 and Sri P.Kamalakar, learned counsel appearing on behalf of the contesting fifth respondent.

The petitioner herein, who claims to be the Ex-President of T.N.T.U.C., Cuddapah district and devotee of Sri Nacharamma Devatha situated at Kotireddy circle in Cuddapah town, filed this Writ Petition, *inter alia,* seeking for a writ of Mandamus to declare the action of the respondents 1 to 4 herein in granting licence No.18/2002 in favour of the fifth respondent as illegal and contrary to the Rule 29 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970.

The case of the petitioner is that Sri Nacharamma Devatha temple, situated in Kotireddy circle in Cuddapah town, is sufficiently old and has been existing for the last more than 90 years and the same was registered with the Endowments Department. It is a public place of worship and the Goddess is the family deity of many of the families in and around Cuddapah town. Normally, there will be big gatherings and important poojas are being done on every Tuesday and Friday. Most of the devotees include many a women. However, in spite of such religious fervor and public attachment, the third respondent has

granted licence to the fifth respondent to run a bar and restaurant in the name and style of Madhu Bar in Door no.1/444, Nagarajpet, Kotireddy Circle, Cuddapah town, which is within 100 mts. from the main entrance from the said temple in the same street. Though several protests have been made, the same were ignored at the time of granting licence. Apart from that, Kotireddy circle is a busy place in the town and such establishment of bar and restaurant would only add to the traffic congestion causing inconvenience and disturbance to the public. Further, the women devotees are being embraced and are feeling greater annoyance for existence of the bar and restaurant in the close vicinity of the temple. It is submitted that the very grant of licence is in the teeth of the prohibition and bar contemplated under Rule 29 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (for short, 'the Rules, 1970').

That apart, the said bar and restaurant does not have any facilities like parking place and cooking room. All the vehicles are being parked on the main road in front of the bar and restaurant causing disturbance to the smooth flow of traffic. Even though this aspect was brought to the notice of the respondents 1 to 4 herein by filing a representation on 20.09.2002, supported by similar such representations by the local M.L.A. Sri S.A. Khaleel Basha, no action is being taken. Ultimately, the second respondent herein asked the fourth respondent as per the proceedings dated 28.09.2002 to get the distance measured and submit a report. Accordingly, the fourth respondent along with third respondent, made a local enquiry on 25.10.2002 and sought to measure the distance though not in accordance with Rule 29 of the Rules, 1970. Thereupon, a report has been submitted by the third respondent on 05.11.2002 showing the distance at 98.25 meters. It is pointed out that the distance as measured is not proper and there was no measurement of the distance from mid-point of the said bar and restaurant to the mid point of the main entrance of the temple along with foot path, which, in fact, comes hardly to 83.13 meters. Whereas the measurement taken by the authorities in the said enquiry was from entrance of the said bar

and restaurant to the mid point of road and from there to the mid point of the entrance of the temple leaving the foot path, and as a result, additional area is sought to be included to an extent of 15.12 meters. Therefore, the entire action is totally illegal and the licence is liable to be cancelled.

However, having come to know of the problems faced, the fifth respondent had filed an ante-dated application dated 21.10.2002 before the third respondent herein for permission to shift the present entrance of the bar and restaurant from house no.1/444 to 1/443 to cover up the shortage of distance and to show compliance of the Rule 29 of the Rules, 1970. Accordingly, the third respondent submitted proposals on 28.10.2002 to the second respondent and recommended for grant of the permission. Thereafter, the fourth respondent submitted a report on 05.11.2002 whereupon the second respondent permitted the fifth respondent for shifting the entrance. Followed thereby, the fifth respondent demolished the house bearing no.1/443 and shifted the entrance of the bar and restaurant. This aspect has been focused along with photos in the local news paper Andhra Jyothi telugu daily on 09.11.2002. The petitioner had made another representation to the second respondent on 14.11.2002 along with the said news item. However, the second respondent replied on 15.11.2002 stating that the distance is 119.22 meters. All these facts would amply show that the authorities are in direct collusion with the fifth respondent for establishing and continuing the said bar and restaurant within the prohibited area, affecting the sentiments of the local public. The petitioner had filed Writ Petition No. 6732 of 2003 challenging such action and the same was disposed of on 06.08.2002 directing the first respondent to consider the objections raised by the petitioner and pass appropriate orders within a period of eight weeks. Accordingly, the petitioner had made further representation, and in spite of pointing out all the said defects, the first respondent by the impugned proceedings dated 18.09.2003 rejected the petitioner's objections on the ground that the distance is 119.22 meters as verified by the Joint Collector, Cuddapah and the

same is not contrary to Rule 29 of the Rules, 1970. Hence, this Writ Petition.

In the counter affidavit filed by the respondents 1 to 4, it was stated that there is absolutely no violation of any of the conditions as contemplated under Rule 29 of the Rules, 1970, and further in view of the amended Rule 29 of the Rules, 1970, the plea of the petitioner was rightly rejected since as per the said amendment, the required distance restriction is only 50 meters and not 100 meters as sought to be relied on, since Cuddapah is a special grade municipality.

In the counter affidavit filed by the fifth respondent herein, it is submitted that the petitioner does not have any locus nor can make any grievance on such false grounds. Further, it was his case that the petitioner has been set up by Sri N.Madhusudhan Reddy, who is an IL-24 licence holder and proprietor of M/s. Surya Wines situated opposite to the bar and restaurant of the fifth respondent, and who, due to business rivalry, sought to initiate the present proceedings and got filed the objections. It was further pointed out that he was informed by letter dated 31.05.2002 by the Prohibition & Excise Superintendent, Cuddapah that the distance from temple to his proposed premises in door no. 2/430-4B was only 97 meters and so, he was directed to select another place. Though he did not secure any such place beyond 100 meters, he was given licence no.509/02-03, dated 11.06.2002 for the same premises. The petitioner did not challenge grant of such licence in favour of said N.Madhusudhan Reddy, whereas he has chosen to challenge as against that of the fifth respondent. It is also pointed out that in the very same premises no.1/444, earlier there was an IL-24 retail shop of S.Malleswara Reddy from 01.04.1999 to 27.03.2002, which again remained unchallenged either by the petitioner or by any other person, on any such objections. Therefore, there are absolutely no merits in the petitioner's complaint or the objections raised by him. It was further

pointed out that Sri Nacharamma Devatha temple is situated in R.S. No.60 behind the building, which is a commercial complex and the distance between the temple and that of the bar and restaurant is 119.22 meters. It was further pointed out that the very same Madhusudhan Reddy got constructed a gate on 22.11.2002 between two commercial complexes after grant of the licence to the fifth respondent against which complaint was made by the fifth respondent. Therefore, it can not be said that there is any justification, much less any merits, in the objections raised by the petitioner nor there is any violation of the Rule 29 of the Rules, 1970.

Though several contentions are sought to be urged on behalf of the petitioner as well as the respondents herein, the main question which has to be considered for the purpose of this case is as to whether the grant of licence in favour of the fifth respondent is in violation of Rule 29 of the Rules, 1970 ?

There is no dispute to the fact that there exists Sri Nacharamma Devatha temple in the Kotireddy circle as pointed out by the petitioner and there is a dispute in regard to the correct distance between the temple and the bar and restaurant. Though on the representations made by the petitioner, an attempt was made by the authorities to measure the distance, it was pointed out by the petitioner that the measurements have not been taken properly and in fact, conveniently by avoiding the foot path and the relevant two points, to show that the distance is more than 100 meters. However, by taking note of the fact, as pointed out on behalf of the respondents 1 to 4 in their counter affidavit, that Cuddapah town is a Special Grade Municipality and therefore, necessarily it is the requirements as contemplated under the amended provision of Rule 29 of the Rules, 1970, that required to be taken into consideration rather than 100 meters as pointed out by the petitioner. Now, as per proviso to clause

(ii) sub-rule (1) of Rule 29 of the Rules, 1970, which was amended as per G.O. Ms. No.1081 Revenue (Ex.II), dated 31.10.2003, in the limits of Special Grade Municipalities, the distance restriction shall be 50 meters. Therefore, whether the distance be either 80 meters or 119 meters, it does not make any difference. Admittedly, even taking the distance as pointed out by the petitioner, the same is beyond 50 meters. In view of the same, it can not be said that there is any or there can be any, violation of Rule 29 of the Rules, 1970. In the circumstances, it is not necessary to go into the various other aspects as pointed out by the petitioner in regard to the correctness of the survey and measurements made by the authorities nor even as to the existence of other bar and restaurant established by rival licence holder, etc. It is to be held that having regard to the amendment of the Rule 29 of the Rules, 1970, there is no illegality nor there is any violation of any of the conditions as contemplated in the aforesaid Rule in granting licence to the fifth respondent. I do not find any merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

17.01.2005

DRK

Copy to:

1 The Principal Secretary to Govt., Government of Andhra Pradesh,
Revenue Department, A.P. Secretariat, Hyderabad
2 The Commissioner of Prohibition and Excise, A.P. Hyderabad
3 The Superintendent of Prohibition and Excise, Cuddapah district
4 The Joint Collector, Cuddapah District

5 Two CCs to the G.P. for Prohibition & Excise, High Court of A.P., High Court buildings, Hyderabad (o.u.t.)

6 Two CD copies.